



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Asfaltos Panamenos, S.A.--Reconsideration

File: B-232629.2

Date: October 19, 1988

DIGEST

An untimely protest alleging an unduly restrictive requirement will not be considered under the significant issue exception to the bid protest timeliness rules where the issue of restrictiveness raised by the protester does not appear to be of widespread interest to the procurement community.

DECISION

Asfaltos Panamenos, S.A. requests reconsideration of our dismissal as untimely of its protest concerning request for proposals (RFP) No. F66502-88-R-0070, issued by the Department of the Air Force for road repairs at two bases in Panama. We affirm the dismissal.

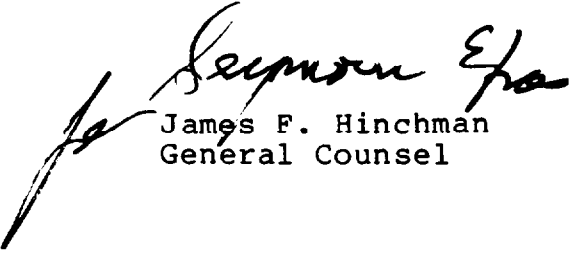
In its original protest, Asfaltos argued that the inclusion of items Nos. 0001AK and 0001AL in the solicitation was unduly restrictive of competition. Items Nos. 0001AK and 0001AL required the contractor to remove existing bituminous surfaces by cold milling. On August 5, 1988, Asfaltos protested to the Air Force that there was only one prospective offeror that had cold milling equipment available locally, and argued that the contract requirements could be satisfied without the use of the cold milling equipment. On August 17, the Air Force responded to Asfaltos, stating that it would not remove item Nos. 0001AK and 0001AL from the solicitation, explaining that the cold milling procedure was best and that in the past year two different contractors had done cold milling for the Air Force in Panama. Asfaltos continued making its position known to the Air Force in letters dated August 18 and September 8. The Air Force responded again in a letter dated September 9, in which it explained its reasons for retaining the cold milling requirement.

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Asfaltos filed a protest with our Office on September 16, 1988, raising essentially the same concerns as in its agency-level protest. We dismissed this protest as untimely, however, because it was filed more than 10 days after the Air Force's August 17 denial of Asfaltos' August 5 agency-level protest. 4 C.F.R. § 21.2(a)(3) (1988).

In its request for reconsideration, Asfaltos argues that its protest should be considered under the significant issue exception to our timeliness rules found at 4 C.F.R. § 21.2(b). In order to prevent the timeliness requirements from becoming meaningless, however, we strictly construe and seldom use the significant issue exception, limiting it to protests that raise issues of widespread interest in the procurement community or which have not been considered on the merits in a previous decision. Astronautics Corp. of America--Request for Reconsideration, B-229854.2, et al., Apr. 20, 1988, 88-1 CPD ¶ 390. The protest before us does not appear to present an issue whose resolution would benefit parties other than Asfaltos. Therefore, we do not view the alleged restrictiveness of the cold milling requirement as meeting this standard. See Herman Miller Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549.

Our prior dismissal is affirmed.



James F. Hinchman
General Counsel